

HOUSE BILL NO. 376

INTRODUCED BY M. MILBURN

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4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE LAW REGARDING THE RECREATIONAL USE OF
5 SURFACE WATERS BY PROHIBITING CAMPFIRES WITHIN SIGHT OF ANY OCCUPIED DWELLING OR
6 WITHIN 500 YARDS OF ANY OCCUPIED DWELLING, WHICHEVER IS LESS, WITHOUT PERMISSION OR
7 CONTRACTUAL ARRANGEMENT WITH THE LANDOWNER; AMENDING SECTION 23-2-302, MCA; AND
8 PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

11
12 **Section 1.** Section 23-2-302, MCA, is amended to read:
13 **"23-2-302. Recreational use permitted -- limitations -- exceptions.** (1) Except as provided in
14 subsections (2) through (5), all surface waters that are capable of recreational use may be so used by the public
15 without regard to the ownership of the land underlying the waters.

16 (2) The right of the public to make recreational use of surface waters does not include, without
17 permission or contractual arrangement with the landowner:

18 (a) the operation of all-terrain vehicles or other motorized vehicles not primarily designed for operation
19 upon the water;

20 (b) the recreational use of surface waters in a stock pond or other private impoundment fed by an
21 intermittently flowing natural watercourse;

22 (c) the recreational use of waters while diverted away from a natural water body for beneficial use
23 pursuant to Title 85, chapter 2, part 2 or 3, except for impoundments or diverted waters to which the owner has
24 provided public access;

25 (d) big game hunting except by long bow or shotgun when specifically authorized by the commission;

26 (e) overnight camping or campfires within sight of any occupied dwelling or within 500 yards of any
27 occupied dwelling, whichever is less;

28 (f) the placement or creation of any permanent duck blind, boat moorage, or any seasonal or other
29 objects within sight of or within 500 yards of an occupied dwelling, whichever is less; or

30 (g) use of a streambed as a right-of-way for any purpose when water is not flowing therein in the

1 streambed.

2 (3) The right of the public to make recreational use of class II waters does not include, without permission
3 of the landowner:

4 (a) big game hunting;

5 (b) overnight camping;

6 (c) the placement or creation of any seasonal object; or

7 (d) other activities ~~which~~ that are not primarily water-related pleasure activities as defined in
8 23-2-301(10).

9 (4) The right of the public to make recreational use of surface waters does not grant any easement or
10 right to the public to enter onto or cross private property in order to use ~~such~~ surface waters for recreational
11 purposes.

12 (5) The commission shall adopt rules pursuant to 87-1-303, in the interest of public health, public safety,
13 or the protection of public and private property, governing recreational use of class I and class II waters. These
14 rules must include the following:

15 (a) the establishment of procedures by which any person may request an order from the commission:

16 (i) limiting, restricting, or prohibiting the type, incidence, or extent of recreational use of a surface water;

17 or

18 (ii) altering limitations, restrictions, or prohibitions on recreational use of a surface water imposed by the
19 commission;

20 (b) provisions requiring the issuance of written findings and a decision whenever a request is made
21 pursuant to the rules adopted under subsection (5)(a); and

22 (c) a procedure for the identification of streams within class II waters ~~which~~ that are not capable of
23 recreational use or are capable of limited recreational use; and a procedure to restrict the recreational use to the
24 actual capacity of the water.

25 (6) The provisions of this section do not affect any rights of the public with respect to state-owned lands
26 that are school trust lands or any rights of lessees of ~~such~~ school trust lands."
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28 NEW SECTION. Section 2. Effective date. [This act] is effective on passage and approval.

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